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June 23, 2008

HAND DELIVERED

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JUN 25 2008

Appeal of Enforcement Order, TDEC-OGC
20th Floor, L & C Tower
401 Church Street
Nashville, TN 37243-1548

DEPT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL

William L. Penny
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(615) 742-0707 FAX
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RE: In the Matter of Bert Smith IV, D/B/A B4 Cattle., Before the Water Quality
Control Board, Director's Order WPC08-0100

To whom it may concern:

Enclosed herewith is the appeal and petition for hearing on behalf of Bert Smith IV, d/b/a
B 4 Cattle Company, Inc., in the above referenced matter.

Please let me know if you have questions.

Very truly yours,

STITES & HARBISON, PLLC

William L. Penny

Enclosure

cc: Bert Smith IV
Paul E. Davis

16088N:081199:781671:1:NASHVILLE

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JUN 25 2008

JUN 25 2008

DEPT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL

RESPONDENT.

CASE NO.: WPC08-0100

ZZZZ:NCJ09:780805:1:NASHVILLE

6. In response to the allegations in Paragraph numbered VII (but chronologically VI) the Respondent would show that the statutory and regulatory citations are paraphrases or incomplete quotes and would deny any language not expressly contained in such statute, rules or permits.

7. In response to the allegations in Paragraph numbered VIII (but chronologically VII), the Respondent admits the allegations except Respondent does not have sufficient information to either admit or deny what the Division noted regarding the vegetation or the flow of Dry Branch.

8. The Respondent admits the allegations in Paragraph number IX (but chronologically VIII).

9. The Respondent admits the allegations in Paragraph numbered X (but chronologically XI).

10. In response to the allegations in Paragraph numbered XI (but chronologically X), sentence does not have sufficient information to either admit or deny the allegations.

11. In response to the allegations in Paragraph numbered XII (but chronologically XI), sentence does not have sufficient information to either admit or deny the allegations.

12. The Respondent denies the allegations in Paragraph numbered XIII (but chronologically XII).

13. The Respondent denies the allegations in Paragraph numbered XIV (but chronologically XIII).

14. All allegations not expressly admitted are hereby denied.

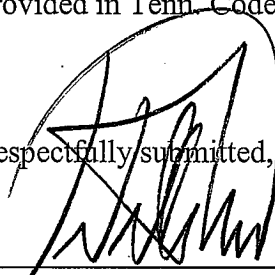
15. As Respondent's first affirmative defense, Respondent would show that the Director's Order fails to state a claim for which relief can be granted.

16. As Respondent's second affirmative defense, Respondent's activities are exempt under Tenn. Code Ann. § 69-3-120 (g).

17. As Respondent's third affirmative defense, Respondent would show that the civil penalty assessment was based upon unlawful procedure and is otherwise arbitrary and capricious.

NOW, having fully responded, the Respondent hereby submits this Petition and requests a hearing before the Water Quality Control Board, and at such hearing the Board dismiss this matter and provide an award attorneys fees as provided in Tenn. Code Ann. 4-5-325 and/or the Equal Access to Justice Act.

Respectfully submitted,



William L. Penny (Sup. Ct. No. 009606)
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Counsel for Bert Smith, IV D/B/A B4 Cattle
Company, Inc.